
In The
Supreme Court of the United States
OCTOBER TERM, 1979

CHARLES VINSON,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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February 8, 1980

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No. 79-830

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In its opposition in No. 79-830, the United States misconstrues both the holding of the Fifth Circuit Court of Appeals in *United States v. Crawford*, 581 F.2d 489 (5th Cir. 1978), and petitioner's first reason for granting the writ.*

*In accord with SUP. CT. R. 24(4) petitioner confines this memorandum to issues and arguments first raised by the Government in its opposition. The reply is therefore limited to a discussion of the Government's misunderstanding of the Fifth Circuit's holding in *Crawford* and its application to the facts of the present case. Petitioner does not address the issue presented under this Court's decision in *Davis v. Alaska*, 415 U.S. 308 (1974), which petitioner submits, see Pet., pp. 15-20, as an independent ground for issuance of the writ.

The Government argues in footnote 2 of its opposition that the holding in *Crawford* rested on the cross-inculpatory nature of the respective defenses presented. The footnote asserts that

. . . *Crawford*, unlike the instant case, involved directly cross-inculpatory defenses which in the absence of substantial independent evidence of guilt, as exists here, created the possibility that the jury unjustifiably would infer guilt from the conflict alone.

Gov't. Opp. at 6-7, n. 2. Petitioner respectfully submits that the Government misunderstands the holding in *Crawford* and petitioner's argument that the Sixth Circuit opinion in this case is inconsistent with it.

First, the cross-inculpatory nature of the defenses in *Crawford* was not the basis of the Fifth Circuit's decision requiring severance. Rather, the Fifth Circuit concluded that the defenses need only "conflict to the point of being irreconcilable and mutually exclusive." 581 F.2d at 491. *Nowhere* in the *Crawford* opinion is there any requirement that the defenses be "cross-inculpatory." Here, petitioner and his co-defendant presented defenses which conflicted to the same extent as those presented by the accused in *Crawford*. See Pet., pp. 6-9, 13-15.

Second, the Government intimates that substantial independent evidence of guilt exists in this case but was nonexistent in *Crawford*. This is simply not true. Substantial independent evidence of guilt existed in *Crawford*, and the Fifth Circuit recognized it, noting that "[a]lthough the evidence of each defendant's guilt was strong, this joint trial was intrinsically prejudicial." 581 F.2d at 492. The substantial independent evidence in *Crawford* was the proximity of the shotgun to both defendants. The Government's reading of the *Crawford* holding, then, is incorrect.

Finally, the Government fails to understand that the antagonistic defenses presented by petitioner and his co-defendant deprived petitioner of his constitutional right to a fair trial. The Government engages in an interesting but irrelevant discussion of the "indirect nature" of the antagonism that existed between petitioner and his co-defendant Arlie Thompson. Viewed in a vacuum, the defenses asserted at trial may not have been as directly cross-inculpatory as the defenses asserted in *Crawford*. Viewed in the context of a joint trial, however, before the same judge and jury, and preceded by the presentation of the Government's case, these defenses were obviously directly antagonistic. See Pet., pp. 6-9, 13-15. It is in this context, petitioner submits, that his constitutional right to a fair trial is implicated. Apparently the Government contends that severance is necessary only when the evidence presented by each defendant on his own behalf is sufficient by itself to convict the other defendant. That is not the holding of *Crawford* or the other cases cited by petitioner.

The relevant inquiry is not whether the defense presented by each accused would have been sufficient to convict the other, but whether, in light of the evidence presented by the Government, the defenses were mutually exclusive. A cursory reading of the transcripts in this case shows the extensive prejudice to which petitioner Vinson was unconstitutionally subjected because of the antagonistic defenses asserted at trial. Thompson contended that he picked up a package for Vinson on two occasions and that he delivered one of them to Vinson, not knowing the contents. Vinson vigorously denied receiving any packages from Thompson, and, indeed, denied meeting with Thompson on any of the relevant occasions. In an attempt to prove that Vinson was untruthful, Thompson called surprise rebuttal witnesses to establish their presence together.

Petitioner has shown, then, that he was constitutionally entitled to a severance of his case from that of his co-defendant. Because the decision of the Sixth Circuit to the contrary is inconsistent with the decisions of the Fifth Circuit in *United States v. Crawford*, 581 F.2d 489 (5th Cir. 1978) and *United States v. Johnson*, 478 F.2d 1129 (5th Cir. 1973), and with the decision of the District of Columbia Circuit in *United States v. Gambrill*, 449 F.2d 1148 (D.C. Cir. 1971), this Court should review the judgment. Petitioner respectfully requests that the writ of certiorari issue.

Respectfully submitted,

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